



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2381/2014*, **

<i>Submitted by:</i>	S.H. (not represented by counsel)
<i>Alleged victims:</i>	The author and her two minor children
<i>State party:</i>	Finland
<i>Date of communication:</i>	10 April 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 25 April 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Child custody and access of mother to her children
<i>Procedural issues:</i>	Standing before the Committee; non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Risk of torture or cruel, inhuman or degrading treatment; liberty and security of person; fair trial; arbitrary interference with family; protection of the family; protection of the child as a minor; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), 5, 7, 9, 14, 17, 23 and 24
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the communication is S.H., born on 1 March 1978. She submits the communication on her own behalf and on behalf of her minor children, M.L.J.H and E.V.S.H, who were born on 14 January 2012. They are all Finnish nationals. She claims that Finland has violated her and her children's rights under articles 2 (3) (a), 5, 7, 9, 14, 17, 23 and 24 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is not represented by counsel.

1.2 On 12 September 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to consider the admissibility of the communication separately from the merits.

1.3 On 26 November 2015, the Committee considered the admissibility of the communication and decided to request additional information from the State party on the

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



questions of custody and place of residence involving the author and her minor children in relation to the claims under articles 9, 14, 17, 23 and 24 of the Covenant.¹

1.4 On 10 April, 2 May and 17 May 2014, 29 September 2015, and 12 May and 9 August 2016, the author requested the Committee to institute interim measures to have the children removed from their father's custody and placed under her custody. The Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accede to her requests.

The facts as submitted by the author

2.1 The author and her former partner, A.J., had twins, M.L.J.H and E.V.S.H, in January 2012. She claims that A.J., the twins' biological father, subjected her to continuous and serious physical and psychological violence; that the physical violence mainly took place between June 2011 and April 2012; and that in some instances, his intention was to cause her to miscarry. For some time, she was unable to leave A.J. because she did not know where to find a women's shelter and she feared for the lives of her children and for her own life. However, on 28 April 2012, she took the children and left the apartment where they had been living. Thereafter, A.J. continued inflicting psychological violence on her. She claims that all the ordeals she went through caused her anxiety and post-traumatic stress disorder and that before and after the separation from A.J., the children were also victims of psychological violence, since they regularly witnessed their father's violence towards her. At a certain point, judicial proceedings were instituted concerning child custody, their place of residence and visitation rights.

2.2 On 17 July 2012, the author reported an act of violence that A.J. had allegedly committed against her to the police, mentioning previous similar acts that had taken place in 2011 and 2012. On 31 October 2012, the police issued a report concerning the author's allegations and on 8 January 2013, the case was transmitted to the Prosecutor. On 19 September 2013, the Prosecutor decided not to prosecute A.J. as there was insufficient evidence to press charges against him.

2.3 On 19 October 2013, A.J. started visiting the children, under supervision. The author claims that soon after the visits started, she was again the victim of physical violence perpetrated by him.

2.4 On 4 December 2013, Kymenlaakso District Court entrusted A.J. with sole custody of the children and ordered that they should live with him as of 1 May 2014. The author would have visitation rights, according to which the children would stay with her in her home every second week, from Thursday to Sunday. The Court referred to a psychologist's statement indicating that, while the author was psychologically stable, she had alienated the children from their father during the period of shared custody and had not allowed him to see them between 1 February and 19 October 2013. Moreover, the psychologist had noted that the author's accusations concerning A.J.'s acts of violence were untrue and that her intention was to defame him. Given that background, the District Court concluded that A.J.'s allegedly violent behaviour towards the author and the children had not occurred. The author claims that the District Court failed to duly take into account the statement produced by a child psychiatrist, which was not even mentioned in the Court's decision, as well as the fact that in October 2013, she started therapy in relation to the trauma caused by the acts of violence she had suffered.

2.5 The author alleges that on 15 December 2013, she was in a shelter in Pori together with a shelter supervisor and the children, since a supervised visit of the father and the children had to take place there. When the father arrived, he behaved badly and attacked her, resulting in a contusion on her right shoulder. Afterwards, she reported the event to the police, and saw a doctor the next day.

2.6 On 17 January 2014, the author submitted an appeal to Kouvola Court of Appeal against the decision of the District Court of 4 December 2013. She claimed that the children should remain in her sole custody and live with her; that the father should be granted

¹ The author's claims under articles 2 (3) (a) and 5 were raised in her submission of 24 April 2015.

supervised visits twice a month; and that those measures were necessary to guarantee her and her children's safety and well-being. In addition, she requested a stay of execution of the District Court's decision until the case was examined by the Court of Appeal.

2.7 On 14 March 2014, the Court of Appeal dismissed her request for a stay of execution and stated that there were no grounds for suspending or revoking the District Court's decision. The author claims that the Court did not provide adequate reasoning for denying her request or address her accusations that the children's father had been violent towards her and had threatened her. She also claims that the Court failed to take into account the medical reports dated 19 November 2013 and 3 January 2014, issued by two psychiatrists, which stated it was not recommendable to change the custody of the children to the other parent, since a radical change or a separation of the children from their mother for a long period of time would negatively affect their development; that the author had post-traumatic stress disorder caused by the continuous violence inflicted by the father; and that she had a stable personality and did not have any mental illness affecting her parenting ability.

2.8 On 1 April 2014, Kouvola Court of Appeal was merged into Itä-Soumi Court of Appeal, which subsequently dealt with the author's case.

2.9 On 10 April 2014, Pori Social Services put the children under emergency placement. It removed them from the author's custody without prior notice and placed them in the orphanage in Kalevanpuisto, in Pori. The author claims that the children strongly opposed the removal and that she was not allowed to visit them that day. She also claims that the Social Services informed her orally that the reason for removing her children was a suspicion that she would try to hinder the transfer of custody on 1 May 2014, since she had not allowed the father's visits during the weekends and objected to the transfer of custody to him. The author was allowed to see the children only once a week. She appealed the Social Services' decisions before Turku Administrative Court. On 16 April 2014, the Administrative Court rejected her appeal.

2.10 The author applied to Itä-Soumi Court of Appeal, requesting the suspension of the enforcement of the District Court's decision of 4 December 2013. On 24 April 2014, the Court of Appeal denied the author's request. It referred to the decision of Kouvola Court of Appeal of 14 March 2014, which stated that the best interest of the children did not require the suspension of the enforcement of the District Court's decision. It recalled that on 10 April 2014, the children had been placed in the orphanage on the grounds that the authorities considered that the author's behaviour might be detrimental to their well-being.

2.11 When the author's communication was submitted to the Committee, she argued that although the oral hearings regarding the appeal of the custody would take place only in summer or autumn 2014, she had exhausted all available and effective domestic remedies as there was no appeal against the decision of Kouvola Court of Appeal concerning her request for interim measures.

2.12 On 2 May 2014, the author was informed by the Social Services that the children had left the orphanage and that custody had been granted to their father, who had taken them to his house in Iitti, Haapa-Kimola. The author claims that his house is 300 km away from their previous home and that it is in a remote rural area, with no neighbours or public services within a 7 km range. The children would have no help if they were victims of violence perpetrated by their father.

2.13 On 16 May 2014, the author submitted a request for interim measures to Itä-Soumi Court of Appeal, and asked it to transfer the children's residence to her house. She claimed that they had already been separated from her for 35 days; that the separation had had traumatic consequences for them; and that it was in their best interest to live with her. During the hearing, the author provided the statement of a child psychiatrist who had found that the enforcement of the Social Services' and District Court's decisions had already severely traumatized the children and had caused serious harm to their mental health. On the same day, the Court of Appeal denied the author's request, but decided that the children had the right to see their mother two hours a week, under supervision. The author claims that this decision runs contrary to the State party's law, since the District Court had already granted her broader visitation rights (see para. 2.4 above) and the father had not opposed that decision.

She also claims that the father had hindered the meetings between her and her children at her home between 8 and 11 and 15 and 18 (or 14 and 16) May 2014.

The complaint

3.1 The author claims that by granting the custody of the children to the father, removing them from her house to live in an orphanage and then in their father's house, and restricting her access to them, the State party violated her and her children's rights under articles 7, 9, 14, 17, 23 and 24 of the Covenant.

3.2 The author claims that the forcible separation of her children from her on 10 April 2014 caused them irreparable harm, which amounts to a violation of article 7 of the Covenant. The authorities arbitrarily severed her relationship with her children and restricted their right to see their mother to only once a week. In reaching that decision, the authorities did not take into account the children's preferences, their very young age or their status as victims and witnesses of continuous acts of domestic violence inflicted by their father. The author refers to the medical report dated 19 November 2013, and argues that the decision of the Pori Social Services had a negative impact on her children's stable development. If that measure is not reversed, it will have severe long-term, irreversible negative effects on their development and mental health.

3.3 The author claims that by allowing the father to visit the children with no supervision, the authorities put them at a serious risk of psychological and physical abuse by him, in violation of article 9 of the Covenant. Children are especially vulnerable and in need of special protection by the authorities to guarantee their right to security of person.

3.4 The author submits that her rights under article 14 have been violated as a result of: (a) the removal of the children on 10 April 2014 by the Social Services, without any written decision and without a fair and public hearing by a competent, independent and impartial tribunal in which she could defend her and the children's rights; and (b) the refusal of her request for interim measures by Kouvola Court of Appeal, without providing adequate reasoning and without taking into account her allegations and documentary evidence about the father's acts of violence and threats against her.

3.5 The author claims that the forcible removal of the children violated their right to the protection of the law against arbitrary interference with their family life and their home, under articles 17 and 23 of the Covenant. There were no grounds for removing the children from their habitual residence, where they had lived and been taken care of for almost two years. Furthermore, granting their custody to their father, with whom they were to live as of 1 May 2014, also violates their right to family life.

3.6 With regard to article 24 of the Covenant, the author claims that the Finnish authorities did not protect her children in accordance with the requirements of their status as very young minors. The authorities failed to duly consider the children's relationship with the author and the violent behaviour of their father.

State party's observations on admissibility

4.1 By note verbale of 25 June 2014, the State party submitted its observations on admissibility and requested the Committee to consider the admissibility of the communication separately from the merits.

4.2 The State party points out that, according to the District Court's decision of 4 December 2013, the children were placed in the sole custody of their father as of 1 May 2014. Consequently, the author can no longer represent the children before the Committee. Therefore, the Committee should declare the communication inadmissible in so far as it raises claims on behalf of the children, pursuant to article 2 of the Optional Protocol and rule 95 of the Committee's rules of procedure.

4.3 The communication should also be declared inadmissible under article 5 (2) (b) of the Optional Protocol, since the author failed to exhaust domestic remedies. The State party notes that according to section 43 of the Act on Child Custody and Rights of Access, the decision of the District Court of 4 December 2013 may be enforced immediately. However, the author appealed that decision before the Court of Appeal and also requested, as interim measures, a

stay of execution of the District Court's decision and an order for supervised visits of the children by their father during the proceedings. The author also objected the Court's competence. On 14 March 2014, the Court of Appeal rejected the author's request for interim measures. Nevertheless, at the time that the State party's observations were submitted to the Committee, the matter was still pending before the Court of Appeal.

4.4 The Court of Appeal's rejection of the author's request for interim measures is a procedural interim order connected to the proceedings concerning the principal claim (the custody of the children and their residence). Such a decision, according to chapter 10, section 25 of the Enforcement Code, is not subject to a separate appeal. However, it can be appealed when appealing against the decision concerning the principal claim in the matter. A decision concerning a request for interim measures does not gain legal force nor does it have *res judicata*. Furthermore, a party can always submit a new request for interim measures despite a decision rejecting a previous request. In fact, the author herself submitted a new request for interim measures, which was denied by the Court of Appeal on 16 May 2014.

4.5 Pursuant to a decision taken by the Social Services on 10 April 2014, the children were placed urgently in an orphanage in accordance with sections 13 and 38 of the Child Welfare Act. Pursuant to section 90 of that Act, decisions concerning emergency placement by municipal office holders under the municipal bodies responsible for social services may be appealed to an administrative court, as provided in the Administrative Judicial Procedure Act. However, the author has failed to appeal that decision.

Author's comments on the State party's observations and additional submissions

5.1 On 14 July 2014, the author submitted her comments on the State party's observations and maintained that her communication should be regarded as admissible as to her rights as well as the children's rights under the Covenant.

5.2 The author submitted her communication to the Committee on 11 April 2014. At that time, she had custody of her children and thus was entitled to submit a communication on their behalf and to represent them before the Committee. Furthermore, as a parent, she can represent her children in any case, especially regarding claims relating to arbitrary and unlawful decisions regarding their custody, their place of residence and her access to them. In considering the admissibility of the communication regarding the children's rights, the Committee should take into account their vulnerability and need for special protection.

5.3 The author argues that Pori Social Services failed to carry out a thorough investigation concerning the father's violent behaviour, as requested by Kymenlaakso District Court before it took its decision on 4 December 2013. Thereafter, on 10 April 2014, the Social Services decided to place the children in an orphanage on false grounds and without any further investigation. The author claims that the Social Services' decisions were based on false information provided by the father, which she did not have the opportunity to challenge.

5.4 The author contends that every time she has met her children since they have been living in their father's house, they have had different kinds of injuries, such as cuts, lacerations, bruises on different parts of their bodies, and human teeth marks from bites on their backs. They told her that their "Dad hurts". The father has not allowed her to take the children to hospital.

5.5 On 8 December 2014 and 13 and 16 March 2015, the author provided additional information to the Committee. She submits that the father only consented to her weekly, supervised visits to the children between May and December 2014. He refused to take the children to any meetings with the author between 10 December 2014 and 7 March 2015. The father did not allow the author's close relatives to visit the children.

5.6 She reiterated that on several visits, she found that her children had injuries and that, upon the father's request, on 5 June 2014, the Iitti Commune Child Protection Services prevented her from examining the children's body for injuries, from taking pictures of the alleged injuries and from taking them to hospital. She claims that this decision could not be appealed. Despite that, on 20 June 2014, she informed Iitti Social Services and Kaakkois-Suomi Police Department about the injuries. No measures have been taken by the authorities as a result.

5.7 The author alleges that on 3 November 2014, she received a telephone call from the social worker in charge of the children who told her that the police and the Child Protection Emergency Services had made a report concerning a violent assault at the father's home on 26 October 2014. She claims that the social worker refused to give her more detailed information about her children.

5.8 The author refers to instances of the father's violent behaviour towards other persons that took place between 2001 and 2005. She claims that the authorities that decided on custody of the children and their place of residence should have known about those events and taken them into consideration in their assessment.

5.9 The author claims that as a result of this situation, she suffers from insomnia, stress and sorrow. She has been on sick leave on various occasions and received a partial disability allowance.

State party's additional observations

6.1 On 12 March 2015, the State party provided additional observations on the admissibility of the communication. It maintains that the author's comments on admissibility and her additional submissions do not contain any argument justifying the admissibility of the communication. It also maintains that the references to the background of the case and the personal characteristics of the father concern the merits of the communication and cannot be examined in the context of admissibility.

6.2 As for the requirement under article 5 (2) (b) of the Optional Protocol, the State party informs the Committee that the Court of Appeal rendered its decision on 12 June 2014. It decided to partially amend the District Court's decision of 4 December 2013 and granted the author supervised visits to the children. The author filed an application for leave to appeal to the Supreme Court. On 12 September 2014, the Supreme Court rejected the author's application. The State party, however, states that "it does not appear if the [author's] request concerned the whole decision of the Court of Appeal in its entirety or only parts of it. Thus, it cannot be verified if all the available domestic remedies have been exhausted in this respect."

6.3 The State party also informs the Committee that the author appealed to the Administrative Court against the Social Services' four separate decisions of 10 April 2014 concerning the placement of the children and the restrictions on communication between the author and her children. On 12 September 2014, the Administrative Court rejected the author's appeals. Subsequently, the author appealed that decision before the Supreme Administrative Court and, at the time that the State party's observations were submitted to the Committee, the appeal was still pending. The State party notes, however, that the decisions concerning the placement of the children cannot be reviewed by the Supreme Administrative Court.

6.4 The State party acknowledges that a person who is not entitled under domestic law to represent another person may nevertheless, in certain circumstances, act in a procedure of international investigation or settlement on behalf of the other person. In general, a natural mother can act in such procedures on her children's behalf in order to protect their interest. However, at the same time, careful examination is needed to ascertain whether the communication is submitted truly in the best interest of the children in order, for example, to prevent manipulation of the children. In certain cases, there may also be a conflict of interest between a person and the persons represented. The State party refers to article 3 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and maintains that since the children were placed under the sole custody of the father as of 1 May 2014, the author can no longer represent the children before the Committee, and can pursue the communication on her own behalf only.

Author's further submission

7.1 On 24 April 2015, the author submitted further comments in reply to the State party's observations of 12 March 2015.

7.2 The author refers to article 16 of the Convention on the Elimination of All Forms of Discrimination against Women and submits that she has been deprived of almost all of her

rights as a parent, including of her children's guardianship, and therefore discriminated against as a woman.

7.3 The author submits that the communication is to be considered admissible also concerning the claims made on behalf of the children, since it raises claims as to the manner in which the authorities handled their custody and place of residence, ignoring the father's violent behaviour towards her and them. She also submits that article 3 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure applies to different kinds of situations, where for example a parent or someone else tries to manipulate a child's own will. In the present communication, the very young age of the children makes their manipulation impossible.

7.4 As for the exhaustion of domestic remedies, the author argues that the Administrative Court's decision of 12 September 2014 concerning the placement of the children cannot be further appealed. As to the authorities' decision concerning the custody of the children, she points out that her application for leave to appeal to the Supreme Court concerns the whole decision of the Court of Appeal and that domestic remedies have proved to be ineffective since the children have now lived in a violent environment for several months.

7.5 The author claims that the proceedings of the Administrative Court violated article 14 (1) of the Covenant. The Administrative Court refused to hold hearings and to interrogate the author and the witnesses offered by her, such as a child psychiatrist, a communal kindergarten teacher and a social worker from Pori Social Services who made the decision of 10 April 2014. If certain evidence is not considered relevant by a court, it is obliged to provide reasoning for that decision. Nor did the court take into account the documentary evidence submitted by her, such as medical reports concerning the best interest of the children, their mental health and development, medical records concerning the damages caused by the father's acts of violence against the author, and police reports.

7.6 She claims that the social workers from Pori Social Services had a very negative attitude towards her every time she contacted them, starting in June 2013. Despite her complaints of continuing and serious violence and the documentation provided, the social workers failed to evaluate her allegations about the risk that the father could represent for the children. Moreover, the authorities failed to thoroughly investigate the allegations, to punish the perpetrator and to provide protection, shelter and assistance to her and the children in violation of articles 2 (3) (a), 5, 9 (1), 17, 23 (1) and 24 (1) of the Covenant.

7.7 The authorities' indifference to her allegations concerning the father's violence, notably their comments that the author "is stuck in the idea of the father being violent", revictimizes her and constitutes a violation of articles 18 and 19 (2) of the Covenant.

7.8 The manner in which the authorities entered the house of the author's parents on 10 April 2014 to take the children to an orphanage, without showing any decision or providing reasons, also constitutes a violation of article 17 of the Covenant.

Issues and proceedings before the Committee on 26 November 2015

Consideration of admissibility

8.1 The Committee ascertained, as required under article 5 (2) (a) of the Optional Protocol, that, as at 26 November 2015, the same matter was not being examined under another procedure of international investigation or settlement.

8.2 The Committee takes note of the State party's argument that the author has no standing to submit a communication to the Committee on behalf of her children since the District Court's decision of 4 December 2014 placed the children in the sole custody of their father as of 1 May 2014. It also takes note of the State party's argument that, although in general a natural mother has standing to act on her child's behalf in order to protect his or her interest, in certain cases a communication should be declared inadmissible to prevent the manipulation of the child. The Committee further takes note of the author's allegations that at the time that she submitted her communication to the Committee, she had custody of her children, and that her communication raises claims concerning the manner in which the authorities handled the custody and place of residence of her children and arbitrarily granted it to their father. The

Committee recalls that standing under the Optional Protocol may be determined independently of national regulations and legislation governing an individual's standing before a domestic court of law,² and that a non-custodial parent has sufficient standing to represent his or her children before the Committee.³ In the present case, the Committee observes that, given their age, the children are not capable of expressing their own views about submitting a communication, or of consenting to their representation by any person. Furthermore, the case file does not show that the submission of the communication by their mother is clearly against their best interest. Accordingly, the Committee considers that the bond between the author and her children and the nature of the claims are sufficient to justify representation of the children before the Committee by their mother. The Committee therefore concludes that there is no obstacle to the admissibility of the communication under article 2 of the Optional Protocol.

8.3 The Committee takes note of the State party's argument that the author did not exhaust domestic remedies as it cannot be concluded from the author's application for leave to appeal to the Supreme Court that her application concerned all aspects relating to the custody of the children and the author's visitation rights. It also takes note of the State party's argument that at the time that the State party's additional observations were submitted to the Committee, the author's appeal to the Supreme Administrative Court against the Administrative Court's ruling of 12 September 2014, concerning the restriction of contact between the author and her children, was still pending. The Committee notes the author's allegations that her application for leave to appeal to the Supreme Court concerned the whole decision of the Court of Appeal, that the Administrative Court's decision of 12 September 2014 concerning the placement of the children cannot be further appealed and that domestic remedies have proved to be ineffective.

8.4 With regard to the requirement laid down in article 5 (2) (b) of the Optional Protocol, the Committee refers to its jurisprudence and recalls that the determination whether or not all remedies have been exhausted is made at the time a communication is being examined.⁴ In the present case, the Committee observes that the author has applied to the courts regarding the custody and place of residence of her children on a number of occasions. Specifically, she has appealed the District Court's ruling that granted sole custody of the children to the father and disposed their residence in the father's house. On 12 September 2014, her application for leave to appeal was dismissed by the Supreme Court. On the same day, her appeals against the decisions of the Social Services of 10 April 2014 concerning the placement of the children were dismissed by the Administrative Court. The Committee considers that the State party has failed to indicate which other remedies, in addition to those tried by the author, could have been effective to deal with her claims regarding the custody and place of residence of her children. Given the nature of the issues under consideration, the Committee is of the view that the author has made sufficient efforts to bring her claims before the national authorities, and concludes that it is not precluded from considering these aspects of the communication pursuant to article 5 (2) (b) of the Optional Protocol. At the same time, the Committee considers itself presently barred by reasons of lack of exhaustion of domestic remedies from considering questions of visitation rights, since these issues are still pending on appeal before the Supreme Administrative Tribunal.

8.5 As regards the alleged violations of article 5 of the Covenant, the Committee observes that article 5 relates to general undertakings by States parties and cannot be invoked by individuals as a self-standing ground for a communication under the Optional Protocol.⁵ This claim is thus inadmissible under article 3 of the Optional Protocol.

² Human Rights Committee, *P.S. v. Denmark*, communication No. 397/1990, para 5.2.

³ *N.T. v. Canada* (CCPR/C/89/D/1052/2002/Rev.1), para 7.4.

⁴ *Al-Gertani v. Bosnia and Herzegovina* (CCPR/C/109/D/1955/2010), para. 9.3; *Singh v. France* (CCPR/C/102/D/1876/2009), para. 7.3; *Lemerrier v. France* (CCPR/C/86/D/1228/2003), para. 6.4; *Baroy v. Philippines* (CCPR/C/79/D/1045/2002), para. 8.3; and *Bakhtiyari and Bakhtiyari v. Australia* (CCPR/C/79/D/1069/2002), para. 8.2.

⁵ *M. v. Belgium* (CCPR/C/113/DR/2176/2012), para 6.5; and *Wackenheim v. France* (CCPR/C/75/D/854/1999), para. 6.5.

8.6 The Committee takes note of the author's claims under articles 18 and 19 (2) of the Covenant. Nevertheless, the Committee considers that these claims are not sufficiently substantiated for the purpose of admissibility, and finds them inadmissible under article 2 of the Optional Protocol.

8.7 The Committee takes note of the author's claims that the facts she describes amount to violations of her and her children's rights under articles 2 (3) (a), 7, 9, 14, 17, 23 and 24 of the Covenant. The Committee notes in this regard that all of the author's claims were raised before the national courts of the State party and that it is generally for the national courts, and not for the Committee, to evaluate the facts and evidence in a particular case unless it is apparent that the courts' decisions are manifestly arbitrary or amount to a denial of justice.⁶ The Committee also notes, however, that the author has made several claims regarding the conformity of legal proceedings in Finland with the Covenant, which may affect the degree to which the Committee should defer to national courts in evaluating the facts and evidence, including that: (a) that the removal of the children on 10 April 2014 by Social Services was done without a prior, fair and public judicial hearing; (b) that the decision of Kouvola Court of Appeal of 14 March 2014, which denied the request for stay of execution, failed to provide adequate reasoning showing that it had taken into consideration the allegations and evidence of the father's alleged violent behaviour; and (c) that the Administrative Court refused to hold hearings and to interrogate the author and the witnesses provided by her, without giving reasoning for its decision and without considering the documentary evidence she submitted. The Committee has not received from the author any other information that would allow it to qualify the decisions of the national courts as manifestly arbitrary or amounting to a denial of justice.

8.8 The Committee considers the author's claim regarding the execution of the removal order to be unsubstantiated, since the removal was an emergency measure designed to implement the 4 December 2013 decision of Kymenlaakso District Court following legal proceedings in which the author participated, and the regularity of which she did not challenge. By their very nature, such emergency measures can often be open to challenge only *ex post facto*, and the author has indeed challenged the measures in subsequent court proceedings. The Committee also finds the author's claim about the failure of Kouvola Court of Appeal to provide reasoning to be unsubstantiated, since the author did not explain how the lack of reasoning of a decision concerning the stay of execution of a prior judicial decision, whose conformity with article 14 was not challenged by the author, affected her right to a fair hearing.

8.9 The Committee notes, however, that the State party has not contested in its submissions on the admissibility of the communication the author's claims concerning the flaws in the proceedings before the Administrative Court. As a result, this aspect of the communication, which may also affect the Committee's assessment of the factual issues underlying the author's claims pursuant to articles 9, 14, 17, 23 and 24 of the Covenant, cannot be deemed, at this point in time, to be inadmissible.

8.10 Accordingly, on 26 November 2015, the Committee decided to join the proceedings on admissibility and the merits insofar as the communication raised issues with respect to articles 9, 14, 17, 23 and 24 of the Covenant, in relation to the questions of custody and place of residence involving the author and her minor children. It requested the State party to provide, within six months of the date of transmittal to it of that decision, written explanations or statements clarifying the matter, and indicating the measures, if any, that had been taken by the State.

State party's observations on admissibility in relation to articles 9, 14, 17, 23 and 24 and further submissions

9.1 By note verbal of 30 June 2016, the State party submitted its observations in relation to articles 9, 14, 17, 23 and 24. The State party reiterated its comments of 25 June 2014 and 12 March 2015, emphasizing that the whole communication should be inadmissible.

⁶ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 5.5.

9.2 The State party provides additional factual background to the communication. It indicates that the relationship between the author and the father was quarrelsome before the children were born. The parents took care of the children together before the author moved from their home in Itti to Pori on 27 April 2012. The State party notes that the Child Welfare authorities have examined the family's matters on multiple occasions at the request of both the father and the author. The author reported a number of incidents of assaults and threats perpetrated by the father, while the father claimed that the author was the one who behaved violently. The State party recalls that between April 2012 and December 2013, the author prevented the father from seeing the children, in spite of the interim measures granted by Kymenlaakso District Court on 8 January 2013 requesting that the father be able to see his children under supervision. On 26 April 2013, Satakunta District Court decided that the father's right of access should be enforced and the author should pay a fine for continuing to deny him access. The author's appeals against both decisions were rejected.

9.3 After multiple petitions on both sides regarding the custody of the children, Kymenlaakso District Court requested an external specialist and a psychologist to assess the parenting skills of both parents and examine how the custody, place of residence and right of access should be arranged. On 4 December 2013, Kymenlaakso District Court issued a decision on the custody and right of access to the children, giving the parents joint custody until 30 April 2014 and, as of 1 May 2014, sole custody to the father, who lived in the municipality of Iitti. The father was able to see his children three times in December 2013 under supervision, but the author declared on 22 January 2014 that she would not agree to joint custody and would not hand the children over to their father on 1 May 2014.

9.4 On 1 April 2014, further to a petition from the father, Satakunta District Court ordered that an enforcement authority take the children to the meeting on 1 May 2014 for their move to Iitti. Meanwhile, the author appealed the decision of Kymenlaakso District Court before Eastern Finland Court of Appeal; her appeal was rejected on 12 June 2014. By its interim ruling of 16 May 2014, the Court of Appeal ordered a stay of execution of the Kymenlaakso District Court's decision of 4 December 2013, ordering that the meetings between the children and their mother be supervised until 31 October 2014.⁷ After numerous child welfare notifications, the Child Welfare services placed the children in a childcare institution from 10 April 2014 to 2 May 2014, when the children moved in with their father in Iitti. The author appealed the decision on emergency placement and restrictions on the right of access before Turku Administrative Court, which rejected her appeal on 12 September 2014. The Supreme Administrative Court handed down its final decision on 25 August 2015.

9.5 On 29 April 2015, Kymenlaakso District Court decided, following an assessment by the Child Welfare services, that the meetings between the children and the author would be unsupervised, held in the form of weekend meetings, from Thursday to Sunday, in the author's residence in Pori.

9.6 While the children were with the author in Pori from 10 to 13 September 2015, she allegedly detected a bruise on one of the children's cheeks and took him to hospital for an examination. Given that the author accused the father of having struck the child, the doctor who examined the child reported the matter to the Pori City on-call Social Services, which filed a report to the police. After investigation, the authorities concluded that there was no need for an emergency placement of the children. The social workers noted that the relationship between the children and the father appeared affectionate and harmonious.

9.7 The State party reiterated that the communication should be declared inadmissible. The State party argues that the author submitted an application to the European Court of Human Rights and requested interim measures under rule 39 of the rules of the Court. That application was declared inadmissible on May 2015. The State party argues that the author's case has thus been considered by another procedure of international investigation and should therefore be declared inadmissible. The State party also notes that in the author's submissions to the Committee subsequent to the admissibility decision of 26 November 2015, she invokes several articles of the Covenant and several events that are different from the ones mentioned

⁷ The Court of Appeal justified the need for supervision on the grounds of the potential risk that the author might fail to return the children after the meetings.

in the Committee's decision. The State party notes that the author has not exhausted domestic remedies concerning those new claims. The State party also recalls that, in its decision of 26 November 2015, the Committee explicitly limited the scope of the matter to articles 9, 14, 17, 23 and 24 of the Covenant in relation to the questions of custody and place of residence involving the author and her children. The State party observes that, since the author has been able to visit her children without supervision within the terms of her right to visit, the author and her children have lost their victim status and the communication should be declared inadmissible *ratione personae*.

9.8 Concerning article 9 of the Covenant, the State party notes that the Social Services and Healthcare Centre of Pori has given serious consideration to the author's concerns about the safety and security of the children and has had the father's alleged violence and infliction of bodily harm on the children investigated with due care and diligence. The Social Welfare authorities have had face-to-face meetings and discussions with the parties and have had access to extensive documentary evidence and other materials. The social workers have been in a position to formulate an independent, objective view of the father's personality and his ability to assume responsibility for his children's security, care and custody. The State party reiterates that the children have been under child protection measures and that the author has failed to substantiate how the measures taken by the domestic authorities have been insufficient to fulfil the requirements of article 9.

9.9 Concerning articles 17, 23 and 24 of the Covenant, the State party considers that the decision to grant the father sole custody of his children and to order the children to live with him in Itti safeguarded the children's right to maintain personal relations and direct contact with both parents on a regular basis, thus respecting the protection of family and private life. The State party argues that the child welfare authorities and the other authorities who have observed the children have made every effort to give due consideration to the children's right to have contact with both parents while taking into account the rights and obligations of both parents. Protection has been granted to the children as well as the family life of the entire family, as required by the Covenant. The State party argues that the author has not been able to substantiate how the measures taken by the State party's authorities have violated the rights to privacy and family life enshrined in articles 17 and 23, or how the measures taken to protect family life have been insufficient to fulfil the requirements of article 24.

9.10 Concerning article 14 of the Covenant, the State party notes that the present communication concerns two separate sets of judicial proceedings: the child protection measures under the Child Welfare Act; and child custody and right of access under the Act on Child Custody and Right of Access. The State party recalls that, according to the Committee's decision of 26 November 2015, the author's claims concerning the conformity of the legal proceedings regarding the removal of the children on 10 April 2014 without a prior, fair and public judicial hearing and the decision of Kouvola Court of Appeal of 14 March 2014 denying the request for stay of execution are unsubstantiated.

9.11 Concerning the alleged flaws on the part of Turku Administrative Court, the State party recalls that the proceedings before the Administrative Court did not concern the dispute over child custody and right of access, but only the decision of 10 April 2014 of the social welfare authority on emergency placement and restrictions on contact. The State party recalls that the author was heard, and that the safety and needs of the children were discussed with her before the emergency placement and the restrictions on contact. With regard to the author's claim about the absence of an oral hearing, the State party refers the Committee to section 39 of the Child Welfare Act, which states that when a decision is taken about emergency placement, the hearing of opinions of the child or a parent might be waived if the delay in handling the case might cause harm to the child's health, development or security. The State party adds that, according to the reasoning of the decision of Turku Administrative Court of 12 September 2014, no grounds existed for holding an oral hearing in the matter. The court stated that the matter concerned an emergency placement and restrictions on contact ordered for a period of one month. Considering the written evidence received in documents and the fact that the emergency placement and the restrictions on contact had already terminated, it would have been unnecessary to hear the mother and the witnesses about the circumstances of the children in an oral hearing. In its decision of 25 August 2015, the Supreme Administrative Court referred to the same reasoning. The State party notes that

Turku Administrative Court and the Supreme Administrative Court provided reasoning concerning oral hearing. The State party finds that Turku Administrative Court reasoned in length the necessity of the emergency, taking into account the issues raised by the author in her submissions. Similarly, in its decision of 25 August 2015, the Supreme Administrative Court took into account all the submissions submitted to the Court, including those concerning the incident that took place on 26 October in the father's home. The State party argues that emergency placement cannot be used for an inappropriate purpose, as a means of resolving a custody dispute, as indicated by Turku Administrative Court. The State party concludes that the author has not been able to substantiate her claims concerning the flaws in the proceedings and holds that the proceedings before the administrative courts complied with article 14 of the Covenant.

9.12 On 4 May 2018, the State party submitted further information indicating that the author has made many allegations that are irrelevant and cannot be verified. The State party added that on 17 November 2017, the author and the children's father entered into an agreement concerning enforcement of the author's visitation rights, which is at the core of the present communication. At the request of the parties, the agreement was confirmed by the Eastern Finland Court of Appeal on 20 November 2017. The decision was not appealed and has become final. The State party also argued that it is not for the Committee to act as a fourth instance to domestic courts and insisted that the communication should be declared inadmissible.

Author's observations on admissibility in relation to articles 9, 14, 17, 23 and 24 and further submissions

10.1 On 29 September 2015, the author submitted further information. On 12 September 2015, when she was in charge of the children for the weekend, she noticed that M.L.J.H. had a bruise on his cheek. When she asked him what had caused the bruise, he said that his father had hit him. The author went to hospital and the doctor reported the suspected assault to the police, recommending an emergency placement as of 13 September 2015, which is the day when the children were supposed to return to their father's care. The author returned to hospital with the children on 13 September 2015, after her other child, E.V.S.H., told her that he had also been injured on his bottom and his back by his father. The children were heard by Pori Social Services without the presence of the author. Pori Social Services had called the father prior to the medical examination of E.V.S.H. and told the author to return the children to the father, in spite of the author's requests for investigation and the children's refusal to go back to their father. The author indicates that there was no written decision, in spite of her demands, and that she was therefore not able to appeal that decision. The author alleges that the actions of Pori Social Services on 13 September 2015 were in violation of articles 2, 5, 7, 9 and 24 of the Covenant.

10.2 On 9 August 2016, the author submitted further information. She argues that during the investigation that led to the ruling of Kymenlaakso District Court on 4 December 2013, the State party's authorities lacked impartiality. She explains that only the report of the father's lawyer was taken into account and that her lawyer was not contacted until 10 April 2014. She explains that she had agreed with her lawyer that she would not take part in the investigation, in good faith, which is why her lawyer did not submit a report. She also argues that she had requested several times that the State party grant her access to the father's potential criminal record. Despite the lack of response from the State party, she managed to obtain it through her own searches with the police. The author claims that the background information on the violent behaviour of the father was not taken into account either by Kymenlaakso District Court in its decision on child custody of 4 December 2013 or in the Eastern Finland Court of Appeal's decision of 12 June 2014.

10.3 The author also refers to an incident that took place on 26 October 2014, when two alleged strangers attacked the father at his home, in the children's presence. She points out that there are contradictions in his testimonies. The author claims that the father actually knew the two men, which demonstrates that the children are not safe with him. The author also refers to the incident of 13 September 2015 and adds that when she returned the children to their father's house that day, he assaulted her. She has not submitted a complaint about

that incident, although her partner witnessed the scene. She alleges that the father prevented her from seeing the children for 11 months after that incident.

10.4 On 26 November 2016, the author submitted her comments in response to the State party's observations of 30 June 2016. She reiterates that she has exhausted domestic remedies, although they proved to be ineffective and arbitrary, and that there have been serious flaws that have affected the outcome of the proceedings. The author recalls that she has challenged the custody, residence and visitation rights in both custody disputes. She notes that she has appealed the administrative proceedings concerning the decision of the immediate placement of the children in an orphanage on 10 April 2014 before Turku Administrative Court and the Supreme Administrative Court and that there is no possibility of further domestic appeal or remedy. She adds that the administrative proceedings concerning the immediate placement of the children following the incident of 26 October 2014 and the lack of immediate placement following the incident of 13 September 2015 did not include a possibility for appeal.

10.5 The author reiterates that there was no oral hearing with regard to the emergency placement and restriction of contact from 10 April to 2 May 2014 before the Administrative Court or the Supreme Administrative Court. She refers to the Committee's general comment No. 35 (2014) on liberty and security of person, in which it stated that placement of a child in institutional care amounted to a deprivation of liberty within the meaning of article 9, and that the child had a right to be heard, directly or through legal or other appropriate assistance, in relation to any decision regarding a deprivation of liberty, and that the procedures employed should be child-appropriate (para. 62). She recalls that the children have not been heard, since the State party decided that they could not be heard. The author argues that the lawfulness of the children's deprivation of liberty was not decided by the court in proceedings that fulfil the requirements of article 14 of the Covenant. She recalls that when the children were "released" to the father's house on 2 May 2014, the security aspects covered by article 9 were not taken into account by the State party. The author notes that the Administrative Court did not even list or state what evidence it had used for the immediate placement and thus the conclusion remains unclear. She argues that only 10 per cent of immediate placements include an oral hearing. She claims that the Administrative Court's decisions were based mainly on the investigations of social workers, which could include allegations and personal opinions, referred to as "evidence" by the Court. In addition, she emphasizes that the "client" has the burden of proving that the social workers' concerns were unfounded and that there was no need to interfere with the family life of the children and the parents. She requests the Committee to order the State party to improve the system to include oral hearing, specifically in cases of interference in family life. She adds that there is no evidence that proves that she would have harmed the children.

10.6 With regard to article 23, the author refers to her previous submissions and claims that any discriminatory treatment with regard to procedures for child custody and visiting rights should be prohibited, in the best interest of the child.

10.7 Concerning article 24 of the Covenant, she recalls that it is for the State party and the parents to create conditions to protect and promote the rights of the child recognized in the Covenant.

10.8 On 11 August 2018, the author reiterated the facts and complaints detailed in her previous communications. Regarding admissibility, the author notes that the communication before the Committee on the Rights of the Child concerns the enforcement of the visitation rights, not the question of child custody and places of residence.

State party's further observations

11. On 14 June 2019, the State party reiterated its position and all of its previous argumentation.

Issues and proceedings before the Committee on 13 March 2020*Consideration of admissibility regarding articles 9, 14, 17, 23 and 24*

12.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

12.2 In accordance with article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

12.3 The Committee notes the State party's position that the communication is inadmissible because the same matter, involving the same facts, has been examined by the Committee on the Rights of the Child and by the European Court of Human Rights, which declared the author's application inadmissible in May 2015. The Committee notes that the matters raised before the Committee on the Rights of the Child relate to the proceedings concerning enforcement of the author's visitation rights as of 13 September 2015, not the custody of the children or the emergency placement of 2014. The Committee therefore considers that although it is not, in principle, precluded from examining the author's claims in relation to the questions of child custody and place of residence involving the author and her minor children, it is precluded from considering matters that have been examined by the Committee on the Rights of the Child, including the enforcement of the author's visitation rights as of September 2015. The Committee notes that the single-judge decision issued by the European Court of Human Rights does not specify the basis for the finding of inadmissibility. Therefore, in the absence of further information on the complaint before the European Court, the Committee is not in a position to determine whether there is a violation of article 5 (2) (b).

12.4 The Committee reiterates that in the present decision, it will examine only the allegations with regard to the alleged flaws of the Administrative Court in relation to articles 9, 14, 17, 23 and 24 concerning child custody and the place of residence. It will not examine any other claims made in the communication that fall outside of this scope.

12.5 With regard to article 9 of the Covenant, the Committee considers that the author has failed to sufficiently substantiate how her claims relating to the emergency placement of the children in an orphanage in order to enforce an order on transfer of custody establish an arbitrary deprivation of liberty or risk to security of person within the meaning of article 9 of the Covenant. The Committee therefore declares those claims inadmissible pursuant to article 2 of the Optional Protocol.

12.6 The Committee notes the author's claims that domestic remedies have been exhausted and have proven to be ineffective. The Committee notes that the author argues that the State party's authorities lacked impartiality during the administrative proceedings and that the proceedings did not meet the requirements of article 14 of the Covenant. The Committee also notes that the author recalls that there was no oral hearing within the administrative proceedings in relation to the decision on emergency placement of the children by the Pori child welfare authority on 10 April 2014. However, the Committee considers that the author does not explain how the fact that she did not have an oral hearing during the administrative proceedings, which under the standard procedure is not required in most cases, has affected her rights under article 14. The Committee notes that the State party submits that both Administrative Courts took into account all the submissions provided by the author and explained why no public hearing was conducted at the Administrative Court level. The Committee also notes that the State party considers that an oral hearing *ex post facto* would have been irrelevant, given that the emergency placement and the restrictions on contact had already terminated at the time of the administrative proceedings.

12.7 The Committee takes note of the author's claims under articles 17, 23 and 24 of the Covenant. The Committee considers that these allegations relate essentially to the evaluation of the facts and evidence conducted by the domestic courts and the application of domestic legislation. The Committee recalls its jurisprudence that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were clearly arbitrary or

amounted to a denial of justice.⁸ The Committee notes that the author has not substantiated how and on what aspect the oral hearing at the time of the administrative proceeding would have had an impact on child custody and place of residence, given that those issues had already been decided by Kymenlaakso District Court and the Eastern Finland Court of Appeal, and more importantly, that the emergency placement decision by the child welfare services was the execution of the decision of Kymenlaakso District Court. Therefore, the Committee concludes that the author has failed to sufficiently substantiate her claims under articles 17, 23 and 24 and declares them inadmissible under article 2 of the Optional Protocol.

12.8 The Committee therefore concludes that the author's claims concerning the alleged flaws of the Administrative Court with regard to articles 9, 14, 17, 23 and 24 of the Covenant are inadmissible under article 2 of the Optional Protocol.

12.9 The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
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⁸ *A.W.K. v. New Zealand* (CCPR/C/112/D/1998/2010), para. 9.3; *Simms v. Jamaica* (CCPR/C/53/D/541/1993), para. 6.2; *Fernández Murcia v. Spain* (CCPR/C/92/D/1528/2006), para. 4.3; and *Allakulov v. Uzbekistan* (CCPR/C/120/D/2430/2014), para. 6.3.